

J. Misc. No. 35 of 2022 (CIS : 35 of 2022)
Arising out of T. Ex. 07 of 2009.
CNR :WBEM0A 000959 2022.
J.O. Code no-WB01062.

Present: **Smt. Sarmistha Ganguly,**
 Civil Judge (Sr. Divn), 1st Court,
 Contai, Purba Medinipur.

Order no.67, dated 08-12-2022:

Both the petitioner and the opposite party no.1 are present and file hazira.

The record is now taken up for passing order in respect of the application for stay of all further proceedings of Title Execution Case being no.07 of 2009 till the disposal of the instant case.

A written objection has been filed on behalf of the opposite party no.1 in respect of the aforesaid application.

Perused the application for stay, written objection and other materials on record.

It appears from the application for stay as filed by the petitioner that he has filed the instant Misc. Case under section 47 of the Code of Civil Procedure for quashing and / or dropping the Title Execution Case no. 07 of 2009 instituted by the decree holder / opposite party no.1 on the grounds inter alia that this Court has no territorial jurisdiction to entertain the Title Execution Case as the decretal property is situated within the Egra P.S. which is under the territorial jurisdiction of the Learned Civil Judge (Sr. Divn), 2nd Court, Contai and as such all the supplementary and ancillary proceedings ought to be transferred to the said Learned Court having jurisdiction. It further appears from the application for stay that the impugned judgment and decree passed in the original Title Suit being T.S. 66 of 2001 is without jurisdiction and the same is a nullity as the final decree in the said suit has been passed against some dead persons. It also transpires from the instant application for stay that the survey report furnished in the final decree proceedings in T.S. 66 of 2001 is not in accordance with law. Hence, as the petitioner has a prima facie case for going for trial in the instant J. Misc. case, the instant application has been filed with a prayer for staying all the further proceedings of the Title Execution case till the disposal of the present J. Misc. Case.

On the contrary, it appears from the written objection as filed by the opposite party no.1 that the instant application for stay as filed by the petitioner is frivolous and motivated and liable to be rejected and that the petitioner has no cause of action for filing the said stay application. It further transpires from the written objection that this Court had passed the order in the final decree petition on 12-11-2008 and the final decree was prepared on 13-02-2009 in respect of the 'Ka' schedule land in T.S. 66 of 2001 and subsequently, the Title Execution case was filed before this Court on 17-09-2009 and at the relevant point of time, this Court had territorial jurisdiction over the lands situated within Egra P.S. Though thereafter there has been a change in the said territorial jurisdiction, neither the Hon'ble High Court nor the Learned District Judge, Purba Medinipur had passed any order to transfer the T.S. 66 of

2001 as well as the Title Execution from this Court till today. Moreover, after the formation of the Egra Sub-Division, no new Court set up has been formed for the same and till today the suits filed over the land under the area of Egra Sub-Division are tried by the Contai Sub-Divisional Court. Hence, as per the provisions of Order 21, Rule 10 of Code of Civil Procedure, this Court has ample jurisdiction to entertain the execution application filed in T. Ex. 07 of 2009 and also proceed with the same.

At the time of hearing, Learned Advocate for the petitioner referred to a judgment of the Hon'ble Apex Court as reported in **2007 (4) SCC 795** in which the Hon'ble Court while discussing the provisions contained in **section 38 and 39 of Code of Civil Procedure** has specifically upheld that a Court which passed a decree cannot proceed against a property situated outside its jurisdiction unless it is a case coming under Order 21, Rule 3 of the Code of Civil Procedure where property is situated within the jurisdiction of more than one Courts. In this respect, the Hon'ble Apex Court also held that the executing Court has to transfer the decree to the Court having jurisdiction over the property for its execution. Relying upon the Judgment of the Hon'ble Court, Learned Advocate for the petitioner prayed for staying of all the proceedings of the Title Execution Case.

On the other hand, Learned Advocate appearing for the opposite party no.1 contended that this Court has ample jurisdiction to proceed with the instant Execution Case and in this context referred to a judgment of the Hon'ble Supreme Court as reported in **(1994) 1 SCC 131** in which it has been held by the Hon'ble Court that where the decreetal property is within the territorial jurisdiction of the court which passed the decree, the Executing Court has jurisdiction to execute the same even though the value of the property sold is beyond its pecuniary jurisdiction.

On careful perusal of the instant application for stay and other materials on record including the judgment of the Hon'ble Apex Court as relied upon by the Learned Advocate for the petitioner and provisions as contained under section 38 and 39 of the Code of Civil Procedure as well as the execution application in prescribed format filed in the Title Execution Case under Order 21, Rule 11 (2) of Code of Civil Procedure, it transpires to me that a decree can be executed only by the Court which passed the decree so long as it is confined to the assets within its jurisdiction or as authorized by the provisions of Order 21, Rule 3 or Order 21, Rule 48 respectively and that if the decreetal property is situated outside the territorial jurisdiction of the executing Court, the same has to be transferred to the Court having such jurisdiction. Therefore, it clearly appears to me that the petitioner is prima facie having a case for trial as the execution application has been filed before the Court which is at present not having territorial jurisdiction over the decreetal property to execute the decree passed in respect thereof which is situated at Egra within the Egra P.S. Further, it also reveals to me that the judgment relied upon by the Learned Advocate for the opposite party no.1 relates to cases where the Executing Court has territorial jurisdiction to execute the decree though the

value of the decretal property may exceed its pecuniary jurisdiction and hence, the ratio of the said judgment is not aptly applicable to the facts and circumstances of the present case. Accordingly, in the light of the judgment of the Hon'ble Supreme Court as relied upon by the Learned Advocate for the petitioner and keeping in mind the provisions of section 38 and 39 of Code of Civil Procedure, I am inclined to stay all further proceedings of the Title Execution Case no.07 of 2009 but of course for a limited period of one month from the date of this order.

Hence, it is

ORDERED

that the application dated 04-11-2022 praying for staying of all further proceedings of the Title Execution Case is hereby considered and **allowed**.

Accordingly, all further proceedings of the Title Execution Case is hereby stayed for a limited period of one month till **08-01-2023**.

To **01-03-2023** for S/R , A/D

D/C by me.

Civil Judge (Sr. Divn),
1st Court, Contai.

Civil Judge (Sr. Divn),
1st Court, Contai.